

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CANDICE STARUH,	:	CIVIL NO: 3:11-CV-01604
	:	
Petitioner	:	
	:	(Judge Brann)
v.	:	
	:	(Magistrate Judge Schwab)
RHODA WINSTEAD,	:	
	:	
Respondent	:	

**MEMORANDUM**

February 13, 2015

**I. BACKGROUND**

Before the Court is a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by Candice Staruh, an inmate currently confined at the State Correctional Institute at Cambridge Springs, Pennsylvania. (ECF No. 1). As grounds for habeas corpus, the petitioner first claims that the trial court violated her Sixth and Fourteenth Amendment rights by allowing her mother to assert her Fifth Amendment privilege not to testify. Second, the Petitioner claims that the trial court violated her Sixth and Fourteenth Amendment rights by not allowing the defense investigator to testify about the statements made by the Petitioner's mother. Finally, the Petitioner claims that the trial court violated her Sixth and Fourteenth Amendment rights by not granting a new trial after evidence of her son

K.J.'s<sup>1</sup> abuse at the hands of his foster mother came to light. Specifically, the Petitioner argues that, because K.J. had implicated her in the death of her other son J.J., the lack of this information prior to trial prevented her from questioning the reliability of his testimony.

On October 14, 2014, Magistrate Judge Susan E. Schwab, to whom the petition is jointly assigned, issued a report and recommendation advising that the petition be denied. (ECF No. 28). The Petitioner subsequently filed objections to the report and recommendation on October 29, 2014. (ECF No. 31). After a *de novo* review of those portions of the report to which the Petitioner objects, the Court will adopt the Report and Recommendation of Magistrate Judge Susan E. Schwab (ECF No. 28) in its entirety and will deny the Petitioner's Writ of Habeas Corpus.

## **II. DISCUSSION**

### **A. LEGAL STANDARD**

Upon designation, a magistrate judge may "conduct hearings, including evidentiary hearings, and . . . submit to a judge of the court proposed findings of fact and recommendations." 28 U.S.C. 636(b)(1)(B). Once filed, this Report and

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<sup>1</sup> We follow the practice of both the Pennsylvania Superior Court and the Magistrate Court by using initials to refer to minor children.

Recommendation is disseminated to the parties in the case who then have the opportunity to file written objections. 28 U.S.C. 636(b)(1). When objections are timely filed, the district court must conduct a *de novo* review of those portions of the report to which objections are made. 28 U.S.C. § 636(b)(1); Brown v. Astrue, 649 F.3d 193, 195 (3d Cir.2011). Although the standard of review for objections is *de novo*, the extent of review lies within the discretion of the district court, and the court may otherwise rely on the recommendations of the magistrate judge to the extent it deems proper. Rieder v. Apfel, 115 F.Supp.2d 496, 499 (M.D.Pa. 2000) (Munley, J.) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)).

For portions of the report and recommendation to which no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED.R.CIV.P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa.2010) (Conner, J.) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir.1987) (explaining that judges should give some review to every report and recommendation)). Regardless of whether timely objections are made by a party, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Local Rule 72.31.

B. ANALYSIS

As indicated above, the Petitioner has filed her Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. 2254. Under this federal habeas corpus remedy, a district court is authorized to “entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. 2254. This habeas corpus relief cannot be granted, however, unless all available state remedies have been exhausted, or there is an absence of available state corrective process, or circumstances exist that render such process ineffective to protect the rights of the applicant. See 28 U.S.C. § 2254(b)(1). The exhaustion requirement is grounded on principles of comity in order to ensure that state courts have the initial opportunity to review federal constitutional challenges to state convictions. See Werts v. Vaughn, 228 F.3d 178, 192 (3d Cir.2000).

Although the Petitioner initially presented three constitutional claims in her Petition for Writ of Habeas Corpus, she objects only to the Report and Recommendation’s denial of her second claim for habeas relief. In this claim, the Petitioner asserts that the trial court’s exclusion of testimony concerning extrajudicial statements made by her mother, Lois Staruh, violated her

constitutional rights. Specifically, the Petitioner alleges that because Lois Staruh's extrajudicial statements made to a private investigator seemed to accept responsibility for J.J.'s death, the trial court's exclusion of testimony confirming these statements violated her Sixth and Fourteenth Amendment right to present a defense.

The Court will now review *de novo* the Petitioner's specific objections to the Report and Recommendation's finding concerning this matter.

The Petitioner first objects to the Report and Recommendation's finding that it was reasonable for the Superior Court of Pennsylvania to conclude that Lois Staruh's extrajudicial statements to a private investigator were not reliable. The Petitioner further objects to the finding that the United States Supreme Court decision in Chambers v. Mississippi, 410 U.S. 284 (1973), which concerns the admission of testimony about extrajudicial confessions, is distinguishable from the Petitioner's case. Finally, the Petitioner objects to the Magistrate Judge's finding that the Superior Court's decision was not in conflict with the holding of Chambers.

Because these objections relate to Chambers v. Mississippi, the Court will review that decision as it relates to the Petitioner's factual situation. In Chambers, a third party had, on separate occasions, orally confessed to the crime with which

the petitioner in that case was charged. Chambers, 410 U.S. at 287. Although the third party made a confession which was “sworn, transcribed, and witnessed” while in custody, he later repudiated his confession and was released. Id. at 287-88. At Chambers’ trial, he was prevented from presenting testimony from parties to whom the third party had confessed. Id. at 289. On appeal, the Supreme Court held that the exclusion of this testimony deprived petitioner of a fair trial. Id. at 302. In its reasoning, the Chambers Court found that the “testimony rejected by the trial court . . . bore persuasive assurances of trustworthiness” and was “critical” to the petitioner’s defense. Id. Furthermore, the Chambers Court found that the third party himself was present at trial and could have been questioned as to the reliability of the testimony concerning his confessions. Id. at 301.

Unlike the testimony in Chambers, the testimony proffered to be introduced in Petitioner Staruh’s case had no indicia of reliability. In Chambers, the Court had offered three facts indicating the testimony’s reliability. Similar facts are not present in the case at bar. First, unlike the extrajudicial statements at issue in Chambers, the statements made by Petitioner’s mother, Lois Staruh, to the private investigator were not made immediately after the homicide, but rather on the eve of the Petitioner’s trial. Second, the extrajudicial statements of Lois Staruh to the private investigator could not be confirmed by other evidence. This paucity of

supporting evidence is in contrast to Chambers where the testimony of extrajudicial statements could be corroborated by, among other things, the sworn confession of the third party. Third, unlike in Chambers where the third party was present at the trial of the petitioner and could be cross-examined by the state, Lois Staruh had invoked the Fifth Amendment privilege allowing her to decline to answer questions that might incriminate her and was consequently unable to be cross examined by the state.

Because of these significant factual differences, the Court finds, following *de novo* review, that the extrajudicial statements of Lois Staruh were not reliable. Based on this determination of reliability, the Court further finds that the facts of Chambers are distinguishable from those of the Petitioner's case and that the Superior Court decision was a reasonable application of Chambers.

The remaining objections to the report and recommendation by the Petitioner include conclusory objections based on the report's interpretation of Chambers. Therefore, because the Court has determined, through *de novo* review, that the Magistrate Judge's findings concerning Chambers were correct, the Petitioner' remaining objections to the Report and Recommendation are denied.

### **III. CONCLUSION**

Magistrate Judge Schwab's Report and Recommendation, (ECF No. 28), is

adopted in its entirety. Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1), is dismissed. No certificate of appealability shall issue. The Clerk is directed to close the case. A separate Order shall issue in conformity with this Memorandum Opinion.

BY THE COURT:

s/Matthew W. Brann  
Matthew W. Brann  
United States District Judge